

Department of the Army, DoD

§ 518.54

(b) Individuals seeking DoD information should address their FOIA requests to one of the addresses listed in appendix B.

(c) Release of information under the FOIA can have an adverse impact on OPSEC. The Army implementing directive for OPSEC is AR 530-1. It requires that OPSEC points of contact be named for all HQDA staff agencies and for all commands down to battalion level. The FOIA official for the staff agency or command will use DA Form 4948-R to announce the OPSEC/FOIA advisor for the command. Persons named as OPSEC points of contact will be OPSEC/FOIA advisors. Command OPSEC/FOIA advisors should implement the policies and procedures in AR 530-1, consistent with this regulation and with the following considerations:

(1) Documents or parts of documents properly classified in the interest of national security must be protected. Classified documents may be released in response to a FOIA request only under AR 380-5, chapter III. AR 380-5 provides that if parts of a document are not classified and can be segregated with reasonable ease, they may be released, but parts requiring continued protection must be clearly identified.

(2) The release of unclassified documents could violate national security. When this appears possible, OPSEC-FOIA advisors should request a classification evaluation of the document by its proponent under AR 380-5, paragraphs 2-204, 2-600, 2-800, and 2-801. In such cases, other FOIA exemptions (para 3-200) may also apply.

(3) A combination of unclassified documents, or parts of them, could combine to supply information that might violate national security if released. When this appears possible, OPSEC/FOIA advisors should consider classifying the combined information per AR 380-5, paragraph 2-211.

(4) A document or information may not be properly or currently classified when a FOIA request for it is received. In this case, the request may not be denied on the grounds that the document or information is classified except in accordance with Executive Order 12356, § 1.6(d), and AR 380-5, paragraph 2-204, and with approval of the Army General Counsel.

(d) OPSEC/FOIA advisors will—

(1) Advise persons processing FOIA requests on related OPSEC requirements.

(2) Help custodians of requested documents prepare requests for classification evaluations.

(3) Help custodians of requested documents identify the parts of documents that must remain classified under this paragraph and AR 380-5.

(e) OPSEC/FOIA advisors do not, by their actions, relieve FOIA personnel and custodians processing FOIA requests of their responsibility to protect classified or exempted information.

§ 518.54 Requests from private parties.

The provisions of the FOIA are reserved for persons with private interests as opposed to federal or foreign governments seeking official information. Requests from private persons will be made in writing, and will clearly show all other addresses within the Federal Government to whom the request was sent. This procedure will reduce processing time requirements, and ensure better inter and intra-agency coordination. Components are under no obligation to establish procedures to receive hand delivered requests. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in §§ 518.24 and 518.32. DA officials will release the following records, upon request, to the persons specified below, even though these records are exempt from release to the general public. The 10-day limit (§ 518.22) applies.

(a) *Medical records.* Commanders or chiefs of medical treatment facilities will release information.

(1) On the condition of sick or injured patients to the patient's relatives.

(2) That a patient's condition has become critical to the nearest known relative or to the person the patient has named to be informed in an emergency.

(3) That a diagnosis of psychosis has been made to the nearest known relative or to the person named by the patient.

(4) On births, deaths, and cases of communicable diseases to local officials (if required by local laws).

(5) Copies of records of present or former soldiers, dependents, civilian employees, or patients in DA medical facilities will be released to the patient or to the patient's representative on written request. The attending physician can withhold records if he or she thinks that release may injure the patient's mental or physical health; in that case, copies of records will be released to the patient's next of kin or legal representative or to the doctor assuming the patient's treatment. If the patient is adjudged insane, or is dead, the copies will be released, on written request, to the patient's next of kin or legal representative.

(6) Copies of records may be given to a Federal or State hospital or penal institution if the person concerned is an inmate or patient there.

(7) Copies of records or information from them may be given to authorized representatives of certain agencies. The National Academy of Sciences, the National Research Council, and other accredited agencies are eligible to receive such information when they are engaged in cooperative studies, with the approval of The Surgeon General of the Army. However, certain information on drug and alcohol use cannot be released. AR 600-85 covers the Army's alcohol and drug abuse prevention and control program.

(8) Copies of pertinent parts of a patient's records can be furnished to the staff judge advocate or legal officer of the command in connection with the Government's collection of a claim. If proper, the legal officer can release this information to the tortfeasor's insurer without the patient's consent.

NOTE: Information released to third parties under paragraphs (a) (5), (6), and (7) of this section must be accompanied by a statement of the conditions of release. The statement will specify that the information not be disclosed to other persons except as privileged communication between doctor and patient.

(b) *Military personnel records.* Military personnel records will be released under these conditions:

(1) DA must provide specific information about a person's military service (statement of military service) in re-

sponse to a request by that person or with that person's written consent to his or her legal representative.

(2) Papers relating to applications for, designation of beneficiaries under, and allotments to pay premiums for, National Service Life Insurance or Serviceman's Group Life Insurance will be released to the applicant or to the insured. If the insured is adjudged insane (evidence of an insanity judgment must be included) or dies, the records will be released, on request, to designated beneficiaries or to the next of kin.

(3) Copies of DA documents that record the death of a soldier, a dependent, or a civilian employee will be released, on request, to that person's next of kin, life insurance carrier, and legal representative. A person acting on behalf of someone else concerned with the death (e.g., the executor of a will) may also obtain copies by submitting a written request that includes evidence of his or her representative capacity. That representative may give written consent for release to others.

(4) Papers relating to the pay and allowances or allotments of a present or former soldier will be released to the soldier or his or her authorized representative. If the soldier is deceased, these papers will be released to the next of kin or legal representatives.

(c) *Civilian personnel records.* Civilian Personnel Officers (CPOs) with custody of papers relating to the pay and allowances or allotments of current or former civilian employees will release them to the employee or his or her authorized representative. If the employee is dead, these records will be released to the next of kin or legal representative. However, a CPO cannot release statements of witnesses, medical records, or other reports or documents pertaining to compensation for injuries or death of a DA civilian employee (Federal Personnel Manual, chap 294). Only officials listed in §518.58(d) (18) can release such information.

(d) *Release of information to the public concerning accused persons before determination of the case.* Such release may prejudice the accused's opportunity for a fair and impartial determination of the case. The following procedures apply:

Department of the Army, DoD

§ 518.54

(1) *Information that can be released.* Subject to paragraph (d)(2) of this section, the following information concerning persons accused of an offense may be released by the convening authority to public news agencies or media.

(i) The accused's name, grade or rank, unit, regular assigned duties, and other information as allowed by AR 340-21, paragraph 3-3a.

(ii) The substance or text of the offense of which the person is accused.

(iii) The identity of the apprehending or investigating agency and the length or scope of the investigation before apprehension. The factual circumstances immediately surrounding the apprehension, including the time and place of apprehension, resistance, or pursuit.

(iv) The type and place of custody, if any.

(2) *Information that will not be released.* Before evidence has been presented in open court, subjective observations or any information not incontrovertibly factual will not be released. Background information or information relating to the circumstances of an apprehension may be prejudicial to the best interests of the accused, and will not be released except under paragraph (d) of this section, unless it serves a law enforcement function. The following kinds of information will not be released:

(i) Observations or comments on an accused's character and demeanor, including those at the time of apprehension and arrest or during pretrial custody.

(ii) Statements, admissions, confessions, or alibis attributable to an accused, or the fact of refusal or failure of the accused to make a statement.

(iii) Reference to confidential sources, investigative techniques and procedures, investigator notes, and activity files. This includes reference to fingerprint tests, polygraph examinations, blood tests, firearms identification tests, or similar laboratory tests or examinations.

(iv) Statements as to the identity, credibility, or testimony of prospective witnesses.

(v) Statements concerning evidence or argument in the case, whether or

not that evidence or argument may be used at the trial.

(vi) Any opinion on the accused's guilt.

(vii) Any opinion on the possibility of a plea of guilty to the offense charged, or of a plea to a lesser offense.

(3) Other considerations.

(i) Photographing or televising the accused. DA personnel should not encourage or volunteer assistance to news media in photographing or televising an accused or suspected person being held or transported in military custody. DA representatives should not make photographs of an accused or suspect available unless a law enforcement function is served. Requests from news media to take photographs during courts-martial are governed by AR 360-5.

(ii) Fugitives from justice. This paragraph does not restrict the release of information to enlist public aid in apprehending a fugitive from justice.

(iii) Exceptional cases. Permission to release information from military personnel records other than as outlined in paragraph (b) of this section to public news agencies or media may be requested from The Judge Advocate General (TJAG). Requests for information from military personnel records other than as outlined in paragraph (b) of this section above will be processed according to this regulation.

(e) *Litigation, tort claims, and contract disputes.* Release of information or records under this paragraph is subject to the time limitations prescribed in § 518.62. The requester must be advised of the reasons for nonrelease or referral.

(1) *Litigation.* (i) Each request for a record related to pending litigation involving the United States will be referred to the staff judge advocate or legal officer of the command. He or she will promptly inform the Litigation Division, Office of the Judge Advocate General (OTJAG), of the substance of the request and the content of the record requested. (Mailing address: HQDA (DAJA-LT), WASH DC 20310-2210; telephone, AUTOVON 227-3462 or commercial (202) 697-3462.)

(ii) If information is released for use in litigation involving the United

States, the official responsible for investigative reports (AR 27–40, para 2–4) must be advised of the release. He or she will note the release in such investigative reports.

(iii) Information or records normally exempted from release (i.e., personnel and medical records) may be releasable to the judge or court concerned, for use in litigation to which the United States is not a party. Refer such requests to the local staff judge advocate or legal officer, who will coordinate it with the Litigation Division, OTJAG paragraph (a) of this section.

(2) *Tort claims.* (i) A claimant or a claimant's attorney may request a record that relates to a pending administrative tort claim filed against the DA. Refer such requests promptly to the claims approving or settlement authority that has monetary jurisdiction over the pending claim. These authorities will follow AR 27–20. The request may concern an incident in which the pending claim is not as large as a potential claim; in such a case, refer the request to the authority that has monetary jurisdiction over the potential claim.

(ii) A potential claimant or his or her attorney may request information under circumstances clearly indicating that it will be used to file a tort claim, though none has yet been filed. Refer such requests to the staff judge advocate or legal officer of the command. That authority, when subordinate, will promptly inform the Chief, U.S. Army Claims Service, of the substance of the request and the content of the record. (Mailing address: U.S. Army Claims Service, Attn: JACS–TCC, Fort George G. Meade, MD 20755–5360; telephone, AUTOVON 923–7860 or commercial (301) 677–7860.)

(iii) DA officials listed in § 518.54(d) who receive requests under (a) or (b) of this section will refer them directly to the Chief, U.S. Army Claims Service. They will also advise the requesters of the referral and the basis for it.

(iv) The Chief, U.S. Army Claims Service, will process requests according to this regulation and AR 27–20, paragraph 1–10.

(3) *Contract disputes.* Each request for a record that relates to a potential contract dispute or a dispute that has

not reached final decision by the contracting officer will be treated as a request for procurement records and not as litigation. However, the officials listed in §§ 518.50(a) and 518.54(d) will consider the effect of release on the potential dispute. Those officials may consult with the U.S. Army Legal Services Agency. (Mailing address: U.S. Army Legal Services Agency, Attn: JALS–CA, Nassif Building, 5611 Columbia Pike, Falls Church, VA 22041–5013; telephone, AUTOVON 289–2023 or commercial (703) 756–2023.) If the request is for a record that relates to a pending contract appeal to the Armed Services Board of Contract Appeals or to a final decision that is still subject to appeal (i.e., 90 days have not lapsed after receipt of the final decision by the contractor), then the request will be—

(i) Treated as involving a contract dispute; and

(ii) Referred to the U.S. Army Legal Services Agency. (For address and phone number, see paragraph (e)(3) of this section.)

(f) *Dissemination of unclassified information concerning physical protection of special nuclear material.* (1) Unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material, is prohibited under 10 U.S.C. 128 and para 3[EN]200, exemption number 3.

(2) This prohibition shall be applied by the Deputy Chief of Staff for Operations and Plans as the IDA, to prohibit the dissemination of any such information only if and to the extent that it is determined that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) Illegal production of nuclear weapons; or

(ii) Theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(3) In making such a determination, DOD personnel may consider what the likelihood of an illegal production, theft, diversion, or sabotage would be if

Department of the Army, DoD

§ 518.56

the information proposed to be prohibited from dissemination were at no time available for dissemination.

(4) DOD personnel shall exercise the foregoing authority to prohibit the dissemination of any information described:

(i) So as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(ii) Upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(A) Illegal production of nuclear weapons; or

(B) Theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(5) DOD employees shall not use this authority to withhold information from the appropriate committees of Congress.

(g) *Release of names and duty addresses.* (1) Telephone directories, organizational charts, and/or staff directories published by installations or activities in CONUS and U.S. Territories will be released when requested under FOIA. In all such directories or charts, names of personnel assigned to sensitive units, routinely deployable units, or units stationed in foreign territories will be redacted and denied under Exemption 6 of the FOIA. By DoD policy, the names of general officers (or civilian equivalent) or public affairs officers may be released at any time. The sanitized copy will be redacted by cutting out or masking the names and reproducing the document. The IDA is the U.S. Army Information Systems Command-Pentagon, Freedom of Information and Privacy Act Division, Attn: ASQNS-OP-F, room 1146, Hoffman Building I, Alexandria, VA 22331-0301.

(2) Public Affairs Offices may release information determined to have legitimate news value, such as notices of personnel reassignments to new units or installations within the continental United States, results of selection/promotion boards, school graduations/completions, and awards and similar

personal achievements. They may release the names and duty addresses of key officials, if such release is determined to be in the interests of advancing official community relations functions.

[56 FR 48932, Sept. 26, 1991, as amended at 56 FR 56010, Oct. 31, 1991]

§ 518.55 Requests from Government officials.

Requests from officials of State, or local Governments for DoD Component records shall be considered the same as any other requester. Requests from members of Congress not seeking records on behalf of a Congressional Committee, Subcommittee, either House sitting as a whole, or made on behalf of their constituents shall be considered the same as any other requester (see §§ 518.24 and 518.56). Requests from officials of foreign governments shall be considered the same as any other requester. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

§ 518.56 Privileged release to officials.

(a) Subject to DoD 5200.1-R (reference (h)), and AR 380-5 applicable to classified information, DoD Directive 5400.11 (reference (d)), and AR 340-21 applicable to personal privacy, or other applicable law, records exempt from release under subpart C, Exemptions, of this part may be authenticated and released, without requiring release to other FOIA requesters, in accordance with DoD Component regulations to U.S. Government officials requesting them on behalf of Federal government bodies, whether legislative, executive, administrative, or judicial, as follows:

(1) To a Committee or Subcommittee of Congress, or to either House sitting as a whole in accordance with DoD Directive 5400.4 (reference (n)). The Army implementing directive is AR 1-20. Commanders or chiefs will notify the Chief of Legislative Liaison of all releases of information to members of Congress or staffs of congressional committees. Organizations that in the normal course of business are required to provide information to Congress may be excepted. Handle requests by